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CLERK OF COURT
CLEVELAND

IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF OHIO
EASTERN DIVISION

T & W FORGE, INC.

Plaintiff,

vs.

V & L TOOL INC.

Defendant.

) CASE NO.

) JUDGE

)

) NOTICE OF REMOVAL OF

) CIVIL ACTION

)

)

)

)

5:05CV1637

JUDGE GAUGHAN

MAG. JUDGE BAUGHMAN

Pursuant to 28 U.S.C. §1441, Defendant V & L Tool Inc. hereby gives notice to this Court of the removal of Case No. 2005CV01648 now pending in the Court of Common Pleas of Stark County, Ohio, to the United States District Court for the Northern District of Ohio, Eastern Division, with full reservation of any and all rights and defenses. Removal to this Court is proper for the reasons set forth below.

1. V & L Tool Inc. is a Defendant in a civil action pending in the Stark County Common Pleas Court, State of Ohio, entitled *T & W Forge, Inc. v. V & L Tool Inc.*, Case No. 2005CV01648. The Complaint was filed on May 20, 2005 and service was made on Defendant V & L Tool Inc. on May 25, 2005 a copy of which is attached hereto as Exhibit A and incorporated herein by reference. Also attached hereto as Exhibit B and incorporated herein by reference is a Judgment Entry dated May 23, 2005. These documents constitute the process, pleadings, and orders served upon or received by Defendant in this case.

2. In its Complaint, Plaintiff T & W Forge, Inc. alleges that it is an Ohio corporation,

and, therefore, is a citizen of the State of Ohio. Defendant V & L Tool, Inc. is a Wisconsin corporation with its principal place of business in Waukesha, Wisconsin. Therefore, Defendant V & L Tool, Inc. is a citizen of Wisconsin, not a citizen of the State of Ohio pursuant to 28 U.S.C. §1332(c). Thus, this is an action between citizens of different states pursuant to 28 U.S.C. §1332(a).

3. In the Complaint filed in this action, Plaintiff has asserted claims for breach of contract, misrepresentation and fraud, unjust enrichment, quantum meruit, on account and conversion. Plaintiff is seeking compensatory damages in the amount of \$32,491.52 plus punitive damages in an unspecified amount "to be determined by a jury". In determining the amount in controversy for purposes of diversity jurisdiction, both compensatory and punitive damages are to be considered. *See, e.g., Wood v. Stark Tri-County Building Trades*, 473 F. 3d 272 (6th Cir. 1973). Because Plaintiff has not specified the amount of punitive damages in the Complaint, it is necessary for Defendant to come forward with evidence to show that the Plaintiff's claims are more likely than not to meet the jurisdictional amount. *See, e.g., Rogers v. Wal-Mart Stores*, 230 F. 3d 868 (6th Cir. 2000).

First, Defendant must show that the type of damages sought, i.e., punitive damages, is available in the action. *Wood, supra*. Plaintiff has asserted claims of fraud and conversion, and, under Ohio law, punitive damages are recoverable for fraud, *see, e.g., Charles Combs Trucking v. International Harvester*, 12 Ohio St. 3d 241, 466 N.E. 2d 883 (1984), and, for conversion, *see, e.g., Fisher v. Barker*, 159 Ohio App. 3d 745, 825 N.E. 2d 244 (2005).

Second, as to the amount of punitive damages, since the amount is unspecified and compensatory damages is less than the jurisdictional amount, Defendant must come forward with

evidence that the amount of punitive damages plus compensatory damages may meet or exceed the jurisdictional amount. The Sixth Circuit and this Court have found that in a re-filed action, such evidence can consist of the Plaintiff's own estimate of damages prayed for in a previously filed action. *See, e.g., Rogers, supra; Szalay v. Yellow Freight System, Inc.*, 999 F. Supp. 972, 974 (N.D. Ohio 1996).

The case at bar is a re-filed action. Plaintiff first initiated these claims in a case captioned *T & W Forge, Inc. v. V & L Tool Inc.*, Case No. 2005CV00988 in the Stark County Common Pleas Court which Defendant removed to this Court in a case captioned *T & W Forge, Inc. v. V & L Tool Inc.* Civil Action No. 5:05CV1068 (the "First Action"). In the First Action, Plaintiff asserted the exact same claims and requested compensatory damages in the amount of \$32,491.52 plus punitive damages "of at least \$100,000" as is set forth in the Complaint in the First Action which is attached hereto as Exhibit C and incorporated herein by reference.

Thus, Plaintiff's own estimate of punitive damages in the First Action was "at least \$100,000". This estimate of punitive damages of \$100,000 plus Plaintiff's claim of \$32,491.52 shows that Plaintiff's claims are more likely than not to exceed the jurisdictional amount of \$75,000 as required by 28 U.S.C. §1332(a). Therefore, the jurisdictional amount requirement is met.

4. Based on the foregoing, this Court has jurisdiction over this civil action pursuant to 28 U.S.C. §1332(a) as the matter in controversy exceeds the value of \$75,000.00, exclusive of interest and costs, and, is an action between citizens of different states. Therefore, this action may be removed to this Court pursuant to 28 U.S.C. §1441.

5. This Notice of Removal is being filed within (30) days from receipt of a copy of

a pleading from which it could first be ascertained that this case became removable, i.e., the Complaint. Therefore, this Notice is being timely filed pursuant to 28 U.S.C. §1446(b).

6. A copy of this Notice of Removal has been filed with the appropriate state court pursuant to 28 U.S.C. §1446(d).

7. No bond is being filed as such former requirement was abolished by the Judicial Improvements and Access to Justice Act of 1988 (Pub. L. No. 100-702), which became law November 19, 1998.

8. No other pleadings or orders are believed to have been filed in this action.

WHEREFORE, Defendant V & L Tool Inc. hereby removes this action from the Stark County Common Pleas Court to this Honorable Court.

OF COUNSEL:
GALLAGHER SHARP,

Respectfully submitted,



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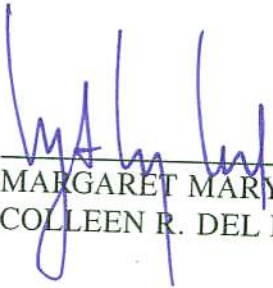
V & L Tool Inc.

CERTIFICATE OF SERVICE

A copy of the foregoing Notice of Removal has been sent by regular U.S. mail this 17th
day of June, 2005 to:

Christopher M. DeVito, Esq.
Kylie L. Grumbine, Esq.
Morganstern, MacAdams
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